

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

SPECTRA SCAPES)	
)	
_____)	CASE NO.
)	2021-00440
ALLEGED VIOLATION OF UNDERGROUND)	
FACILITY DAMAGE PREVENTION ACT)	

OPENING ORDER

Spectra Scapes has been named as a party to an investigation before the Kentucky Public Service Commission (Commission) for allegedly violating the Kentucky Underground Facility Damage Prevention Act (Act).¹

Pursuant to KRS 278.495(2), the Commission has jurisdiction to regulate the safety of natural gas facilities in Kentucky and to enforce minimum federal pipeline safety standards. Under the Act, the Commission has authority to investigate and assess civil penalties for any violation of the Act that results in excavation damage to an underground facility used to transport natural gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. § 60101, *et seq.* Any person who violates any provision of the Act is subject to assessment of a civil penalty in the amount of \$250 for the first offense, no more than \$1,000 for the second offense within one year, and no more than \$3,000 for the third and any subsequent offense. Additionally, any person whose violation of the Act results in damage to an underground facility containing any flammable, toxic, corrosive,

¹ KRS 367.4901 through KRS 367.4917.

or hazardous material or results in the release of any flammable, toxic, corrosive, or hazardous material is subject to an additional penalty of up to \$1,000.

Following receipt of a report of excavation damage to its underground gas pipeline from an operator, Commission Staff (Staff) conducted an investigation and prepared an Incident Report, a copy of which is attached to this Order as an Appendix. In its Incident Report, Staff cites Spectra Scapes for violation of the following provision of the Act:

KRS 367.4911(1)(a) – Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement. .

Based on its review of the Incident Report and being otherwise sufficiently advised, the Commission finds *prima facie* evidence that Spectra Scapes violated the Underground Facility Damage Prevention Act. The Commission further finds that a formal investigation into the excavation damage incident should be conducted.

IT IS THEREFORE ORDERED that:

1. Spectra Scapes shall submit to the Commission, via email sent to PSCED@ky.gov with the case number of this proceeding in the subject line of the message, a written response to the allegations contained in the Staff Incident Report within 20 days of receipt of this Order.

2. **Any partnership, corporation, or business entity (including a limited liability company) must be represented by an attorney licensed to practice law in Kentucky, and such representation includes the filing of papers with and appearances at hearings before the Commission.**

3. An individual may submit a response to the allegations contained in the Staff Incident Report without the representation of an attorney.

4. The Staff Incident Report 43037 in the Appendix to this Order is made a part of the record in this case.

5. **Please note that notice of a hearing to be held in this matter will be mailed to Spectra Scapes once proof of service is received by the Commission. Parties who fail to appear after service will be subject to entry of a default judgment against them.**

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission

ENTERED
FEB 10 2022 rCS
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2021-00440

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2021-00440 DATED FEB 10 2022

TWENTY PAGES TO FOLLOW

PIPELINE DAMAGE INVESTIGATION REPORT

Investigation Information

Investigator Eric Tout **Incident ID** 43037 **Investigation** 7789
Incident Date 8/26/2020 3:55:00 PM **Report Submitted** 9/29/2020

Operator Information

Operator Duke Energy Kentucky, Inc. **Reported By** Laura Mate
Phone (859) 206-4639 **Email** Laura.Mate@duke-energy.com

Incident Location 4 Alexandria Circle **Locate Ticket Number** None
 Ft Thomas KY 41075
 4 Alexandria Cir
County Campbell

Excavator Information

Excavator Spectra Scapes **Organization ID** 1879765
Phone 513-353-9757 **Email**
Address 11109 Guard Ln **Locate Ticket Number** None
 North Bend OH 45052

Damage Report Summary

Excavation Within 18" (Approximate Location)	Gas Or Hazardous Liquids		Type Of Equipment Used	Cost of Damage	Amount Billed
	Contained	Released			
No call to 811	Yes	Yes	Mechanized/Bobcat	\$0.00	\$0.00

The Operator reports that the excavator damaged a pressure stem at the end of a gas main while grading with a bobcat and failed to call the KY Contact Center (811).

The DR is included as Attachment 1.

INVESTIGATION

On 07/22/21 an attempt to contact the Excavator at 513-353-9757 resulted in a message stating that you have reached Spectra Scapes wherein a message was left.

On 07/26/21 an attempt to contact the Excavator at 513-353-9757 resulted in no answer.

On 07/27 & 29/21 an attempt to contact the Excavator at 513-353-9757 resulted in a message stating that you have reached Spectra Scapes wherein a message was left.

On 07/29/21 a Letter To Contact was sent to Benny Muncy, 11114 Guard Lane, PO Box 103, North Bend OH 45052.

The Letter To Contact is include as Attachment 2.

On 07/30/21, via email, the Operator, Duke's Ronya Nabors, provided the following documents and stated that the Excavator has not paid for the damage resulting from this incident.

PIPELINE DAMAGE INVESTIGATION REPORT

- Invoice: Indicating the Excavator on 10/30/20 was billed \$858.43 for the damage.
- Damage Investigation Findings w/Photographs: Indicating the Excavator held no valid LT at the time of the damage and no markings were present.

Ms. Nabors's email and Documents are include as Attachment 3.

On 07/30/21, via email, 811, Carly Dunsmore, conducted a search from 06/01/20 thru 10/31/20 indicating the Excavator held no valid LT on the incident date of 08/26/20.

Ms. Dunsmore's email is include as Attachment 4.

On 08/05/21 an attempt to contact the Excavator at 513-353-9757 resulted in a message stating that you have reached Spectra Scapes wherein a message was left.

On 08/10/21 Mr. Muncy responded to the 07/29/21 Letter to Contact leaving a voice message indicating he could be contacted at 513-728-5115 or 859-466-6397.

On 08/11, 12 & 13/21 voice messages were left for Mr. Muncy at 513-728-5115 and 859-466-6397.

On 08/16/21 an attempt to contact Mr. Muncy resulted in a voice message being left at 513-728-5115 indicating a Demand Letter requiring the attendance to the Damage Prevention Course to receive the reduced penalty of \$250.00 was forthcoming to resolve this incident.

On 08/16/21 Mr. Muncy stated that they were grading to seed. Mr. Muncy was receptive to the above stated terms to resolve this incident.

VIOLATIONS

KRS 367.4911(1)(a) Each excavator, or person responsible for an excavation, planning excavation or demolition work shall, not less than two (2) full working days nor more than ten (10) full working days prior to commencing work, notify each affected operator of the excavator's intended work and work schedule. Contacting the applicable protection notification centers shall satisfy this requirement.

of Offences (Including this incident)

Excavator	Last Offence Incident #	Last Offence Incident Date	Revert to 1st Offence Date (Last Offence Date +365 Days)
1 st	N/A	N/A	N/A

Attachment 1

Gas Excavation Damage Report

Duke Energy Kentucky, Inc.

Submitted 9/29/2020 Incident ID: 43037

[Set back to Edit](#)[Staff Edit](#)[Print \(PDFForm.aspx?Rpt=GasInvestigation&IG=43037\)](#)

Reported By:

Name: Laura Mate
Phone: (859) 206-4639
Email: Laura.Mate@duke-energy.com

Gas Line Incident Occured:

Date: 8/26/2020
Time: 3:55 PM

Details:

Reported Date: 9/29/2020 7:40 AM

Incident Location Address:

Location: 4 Alexandria Cir
Address: 4 Alexandria Circle
City: Ft Thomas
State: KY
County: Campbell
Zip: 41075

Confirm Code:

Number of Customers out: 0

Was gas or hazardous liquids contained in the underground facility?

Was gas or hazardous liquids released into the atmosphere? *

3/2020

Locate Request Ticket No.: None

Excavator: Contractor

Excavator Address:

First Name:
Last Name:
Organization ID:
Company: Spectra Scapes
Phone: 513-353-9757
Email:

Address: 11109 Guard Ln
City: North Bend
State: OH
Zip: 45052
Confirm Code: Y
Excavation Damage: No notification made to the One Call Center

Description of Incident Spectra Scapes was on site grading the dirt and struck the ug gas stem. Spectra Scapes did not have a locate ticket.

Summary Information

9/29/2020

Full details such as the cause Spectra Scapes did not call 811 to have underground facilities marked and struck a pressure stem at the end of a gas main with a bobcat while grading the site.
Extent of the damage Pressure stem knocked off end of gas main.
Cost of the damage \$0.00
Steps taken to prevent re-occurrence
Amount billed to excavator \$0.00

Attachment 2



Andy Beshear
Governor

Rebecca W. Goodman
Secretary
Energy and Environment Cabinet

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564-3460
psc.ky.gov

Michael J. Schmitt
Chairman

Kent A. Chandler
Vice Chairman

Talina R. Mathews
Commissioner

July 29, 2021

Benny Muncy
Spectra Scapes
11114 Guard Lane
PO Box 103
North Bend OH 45052

Re: Violation of Kentucky Underground Facility Damage Prevention Act
Incident Number: **43037**

Dear Mr. Muncy:

The Kentucky Public Service Commission (Commission) received a report of damage occurring on August 26, 2020 to a natural gas or hazardous liquid facility located at 4 Alexandria Circle, Ft Thomas, KY, owned and/or operated by Duke Energy Kentucky, Inc. Under the Kentucky Underground Facility Damage Prevention Act (Act), KRS 367.4901 through KRS 367.4917, the Commission has jurisdiction to investigate any violation of the Act that results in excavation damage to underground facilities used to transport gas or hazardous liquid subject to federal pipeline safety laws, 49 U.S.C. secs. 60101 et seq. The Commission regulates the safety of jurisdictional natural gas pipelines in the Commonwealth pursuant to KRS 278.495 and 49 CFR Parts 190, 191, 192 and 195.

Following receipt of the damage notification, Commission Staff (Staff) attempted to contact you on July 22, 26, 27, & 28, 2021 at 513-353-9757 wherein messages were left and no return call was received. To obtain all information regarding this matter it is imperative that contact is made. If there is no contact a penalty of \$1,250.00 could be imposed, therefore please contact me at 502-782-2622.

Respectfully,

A handwritten signature in blue ink that reads "Eric V. Tout". The signature is written over a white rectangular stamp area.

Eric V. Tout
Consumer Complaint Investigator
Division of Inspections / Damage Prevention

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

7020 2450 0000 4207 1677

Certified Mail Fee	\$	3.60
Extra Services & Fees (check box, add fee as appropriate)		
<input checked="" type="checkbox"/> Return Receipt (hardcopy)	\$	2.05
<input type="checkbox"/> Return Receipt (electronic)	\$	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$	
<input type="checkbox"/> Adult Signature Required	\$	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$	

Postage	\$	1.00
Total Postage and Fees	\$	7.45

FRANKFORT KY 40601
AUG 02 2021
USPS

Benny Muncy
Spectra Scapes
11114 Guard Lane
PO Box 103
North Bend OH 45052

Inc 43037

8947 See Reverse for Instructions

Attachment 3

Tout, Eric V (PSC)

From: Nabors, Ronya K <Ronya.Nabors@duke-energy.com>
Sent: Friday, July 30, 2021 8:30 AM
To: Tout, Eric V (PSC)
Cc: Collins, Jim
Subject: RE: [EXTERNAL] 43037, 8/26/2020, 4 Alexandria Circle, Ft Thomas, Spectra Scapes
Attachments: 447574 - Claim Support Package.pdf

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

Good morning Eric.

Here's a copy of the claim support package. There has been no payment from them. Please let me know if there's anything else you need.

Thanks.

Ronya Nabors

NG Damage Prevention

DESK 704-731-4522 CELL 704-576-8155

ronya.nabors@duke-energy.com



From: Tout, Eric V (PSC) <ericv.tout@ky.gov>
Sent: Friday, July 30, 2021 7:25 AM
To: Nabors, Ronya K <Ronya.Nabors@duke-energy.com>
Cc: Collins, Jim <Jim.Collins@duke-energy.com>
Subject: [EXTERNAL] 43037, 8/26/2020, 4 Alexandria Circle, Ft Thomas, Spectra Scapes

***** CAUTION! EXTERNAL SENDER *** STOP. ASSESS. VERIFY!!** Were you expecting this email? Are grammar and spelling correct? Does the content make sense? Can you verify the sender? If suspicious report it, then do not click links, open attachments or enter your ID or password.

Hello Ronya,

The excavator does not seem to want to return my calls, may go to hearing. Please send the damage report, photos, billing and payment info and if no payment please advise.

*Thanks,
Eric V. Tout
Kentucky Public Services Commission
Division of Inspections / Damage Prevention
211 Sower Blvd., Frankfort, KY 40601
Office: 502-782-2622
Fax: 502-564-1582*



INVOICE



Please Make Check Payable to: Project Resources Group

Remit to: Project Resources Group, Inc. Attn. Damage Claims 5340 S. Quebec St., Suite 250S Greenwood Village, CO 80111 EIN: 84-1576547	Invoice # DK-447574 Date: October 30, 2020 Terms: Due Upon Receipt Conf. Code # H99XB
---	--

Responsible for Damages: Spectra Scapes 11109 Guard Ln. North Bend, OH 45052
--

Date & Address Where Damage Occurred: 8/26/2020 4 Alexander Circle Fort Thomas, KY 41075

Labor and Materials Costs:			
	<u>Units</u>	<u>Unit Rate</u>	<u>Amount</u>
<i>Internal Labor Costs</i>			
Service Mechanic A	1.00	\$77.08	\$77.08
Mechanic Operator II OT	1.50	\$89.35	\$134.03
Mechanic Operator I OT	1.50	\$96.69	\$145.03
Emergency Call Out	1.00	\$250.00	\$250.00
SRW Utility, Stake, Flat 4x4	1.00	\$6.85	\$6.85
UtilityTruck / Tandem Axle	1.50	\$13.84	\$20.76
UtilityTruck / Tandem Axle	1.50	\$13.84	\$20.76
Damage Investigation/Quality Control			<u>\$172.00</u>
Sub-Total			\$826.51
<i>Material Costs</i>			
Cap; Pipe	1.00	\$2.63	\$2.63
Adapter; Tube to Pipe	1.00	\$29.28	<u>\$29.28</u>
Sub-Total			\$31.91
Invoice Total			<u>\$858.43</u> =====

Please Make Check Payable to: Project Resources Group

For questions regarding this invoice, please contact: Marlene Ferman, (720) 580-1954 or via email mferman@prgconsulting.net

Damage Investigation Findings

PRG CLAIM:	DK-447574	
DATE OF OUTAGE:	08/26/2020	01:50 PM
NOTIFICATION:	08/26/2020	03:56 PM
ARRIVAL:	08/26/2020	05:03 PM
LOCATION:	4 Alexander Circle, Fort Thomas, KY 41075	
LOCATE TICKET:	NONE	
INVESTIGATOR:	Jason Raleigh	

SUMMARY

On Wednesday, August 26, 2020, I was notified by Duke Energy about damage at 4 Alexander Circle, Fort Thomas, KY 41075. Duke Energy's Underground Facilities were damaged at the above stated location by a Bobcat.



STATEMENTS

Spectra Scapes was on site grading the dirt and struck the ug gas stem. Spectra Scapes did not have a locate ticket.

DETERMINATION

On Wednesday, August 26, 2020, Duke Energy suffered damage to its facilities at the above stated location as a direct result of a landscaping accident by Spectra Scapes. In light of these circumstances, it has been determined that Spectra Scapes will be held liable for this damage and the associated costs to Duke Energy.



ROOT CAUSE

Failure to notify the One Call Center



447574 - Investigator1.JPG



447574 - Investigator2.JPG



447574 - Investigator3.JPG



447574 - Investigator4.JPG



447574 - Investigator5.JPG



447574 - Investigator6.JPG



447574 - Investigator7.JPG



447574 - Investigator8.JPG



447574 - Investigator9.JPG



447574 - Investigator10.JPG



447574 - Investigator11.JPG



447574 - Investigator12.JPG



447574 - Investigator13.JPG



447574 - Investigator14.JPG



447574 - Investigator15.JPG





447574 - Investigator17.JPG



447574 - Investigator18.JPG



447574 - Investigator19.JPG

Attachment 4

Tout, Eric V (PSC)

From: Carly Dunsmore <cdunsmore@usa811.org>
Sent: Friday, July 30, 2021 1:38 PM
To: Tout, Eric V (PSC)
Cc: PSCrequest@kentucky811.org
Subject: Re: 43037

Good afternoon,

We searched between 6/1/2020 - 10/31/2020 and were unable to find any tickets for address 4 Alexandria Circle, in Campbell County. If you have any more information, we would be happy to further assist you.

Thank you,

Carly Dunsmore
Member Services
P: 833-538-0923
F: 317-386-7820



On Fri, Jul 30, 2021 at 7:18 AM Tout, Eric V (PSC) <ericv.tout@ky.gov> wrote:

Please provide locate ticket for:

Incident Date: 8/26/2020

Operator: Duke Energy Kentucky

Incident Location: 4 Alexandria Circle Ft Thomas KY

County: Campbell

Excavator: Spectra Scapes

Thanks,

Eric V. Tout

Kentucky Public Services Commission

Division of Inspections / Damage Prevention

211 Sower Blvd., Frankfort, KY 40601

Office: 502-782-2622

Fax: 502-564-1582

Spectra Scapes
11114 Guard Lane
PO Box 103
North Bend, OHIO 45052

Spectra Scapes
11109 Guard Lane
North Bend, OHIO 45052